IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY SEVENTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 19539 of 2004

Between:

Dr. L. Jayanthi Reddy W/o Dr. S. Jayaram Reddy
R/o Plot No. 57, Kalyannagar, First Phase, Sanjeevreddy Nagar,Hyderabad

..... PETITIONER

AND

1 Municipal corporation of Hyderabad, Tank Bund, Hyderabad, represented by the Commissioner.
2 Assistant Medical Officer of Health, Circle No.5 Municipal Corporation of Hyderabad, Khairatabad, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ order or orders, direction or directions declaring the action of the 2nd Respondent in insisting the petitioner to obtain a Trade License u/s. 521(1)(e) of the Hyderabad Municipal Corporation Act, 1955 in respect of the Hospital of the Petitioner known as JJ Hospital, Kalyanagar, Hyderabad under the demand notice dt 18-10-2004 as illegal, unconstitutional and arbitrary and to issue a consequential direction tothe Respondents to act in accordance with law as declared by this Hon'ble Court in W.P. No. 6253/1992, dated 20-11-2002

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondents: SMT.G.JYOTHI KIRAN, Standing Counsel for the Municipal Corporation of Hyderabad.

The Court made the following:

O R D E R:

This writ petition is filed aggrieved by the action of the respondent-Corporation, in insisting the petitioner to obtain a trade licence under Section 521 of the Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as 'the Act') in respect of his hospital.

The petitioner is a Doctor by profession and has been running a Nursing Home known as J.J. Hospital at Kalyan nagar, First Phase, Sanjeevreddy Nagar, Hyderabad. It is stated that the 1st respondent has notified the Nursing Homes / Hospitals / Clinics under Section 521 (1) (e) of the Act thereby requiring the occupier of the same to take Trade licence under the provisions of the Act. The contention of the petitioner is that as the respondent-Corporation has not yet framed any bye-laws under Section 586 (22) of the Act, the requirement to take a trade licence is an empty formality and illegal and therefore, it is not open to the respondent-Corporation to insist on obtaining such licence.

The Assistant Medical Officer of Health filed a counter-affidavit on behalf of the respondent-Corporation, in which it is stated that the bye-laws have already been framed under Section 521 of the Act,

according to which all types of trades and business including the Hospitals and Nursing Homes should obtain trade licences. However, the Bye-laws are pending approval by the Standing Committee of the respondent-Corporation.

The learned counsel for the petitioner placed reliance upon a decision dated 20-11-2002 rendered by this Court in W.P.No.6253 of 1992 and batch, in which this Court considered an identical question and disposed of the writ petition directing the respondent-Corporation to reconsider the issue in the light of the decision of the Apex Court in A.P. BANKERS & PAWN BROKERS' ASSN. V. MUNICIPAL CORPN. OF HYDERABAD and to frame appropriate terms and conditions to regulate the trade licences in respect of Hospitals & Nursing Homes and thereafter to take appropriate action in the matter. It was also made clear that till the directions are complied the respondent-Corporation should not insist the petitioners therein to obtain licences in terms of the notification issued by it.

In the light of the directions granted by this Court in the said writ petitions, the learned counsel for the petitioner contended that since there are no enforceable bye-laws even as on today, it is not open to the respondent-Corporation to insist upon the petitioner to obtain the trade licence.

As can be seen from the counter-affidavit, the bye-laws framed by the respondent-Corporation have not yet been approved by the Standing Committee and thus as on today there are no enforceable bye-laws. Hence, as rightly contended by the learned Counsel for the petitioner the decision of this Court dated 20-11-2002 in W.P.No.6253 of 1992 and batch squarely applies to the case on hand.

However, the learned counsel for the respondent-Corporation submitted that the petitioner is also running a diagnostic center and medical shop in his hospital premises and so far as the diagnostic center and medical shop are concerned, it is necessary to obtain municipal trade licence. The said fact has not been disputed by the learned counsel for the petitioner.

In the facts and circumstances of the case, the writ petition is disposed of with a direction to the respondent-Corporation not to insist the petitioner for obtaining trade licence till the bye-laws framed are approved by the Standing Committee and are made enforceable. However, this shall not preclude the respondent-Corporation to issue necessary notice so far as the diagnostic center and the medical shop being run by the petitioner in his hospital premises are concerned and to take necessary steps in accordance with law. No costs.

(G. ROHINI, J)

Date:27-01-2005

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To

1 The Commissioner, Municipal corporation of Hyderabad, Tank Bund, Hyderabad.

2 The Assistant Medical Officer of Health, Circle No.5 Municipal Corporation of Hyderabad, Khairatabad, Hyderabad

3 Two CD copies.